

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Papan Analyst: Darrine Distefano Bill Number: AB 1014  
Related Bills: See Legislative History Telephone: 845-6458 Amended Date: 05-01-2001  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Public Records Disclosure Procedure/State Agencies State Date & Time Records Will Be Available

### SUMMARY

When responding to a California Public Records Act request, this bill would require an agency to:

- Estimate the date and time public records would be available to the requester.
- Provide several additional services when assisting the requester.

### SUMMARY OF AMENDMENT

The May 1, 2001, amendment deleted the requirement that when a public agency denies access to public records or information, it must offer suggestions to overcome any legal basis for the denial.

This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

The author's staff has indicated that the intent of this bill is to allow the public easier access to information that can be disclosed under the California Public Records Act (Act).

### EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2002, and would apply on or after that date.

### POSITION

Pending.

#### Board Position:

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<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

#### Department Director

#### Date

Will Bush for G.H.G.

07/10/01

## **ANALYSIS**

### **FEDERAL/STATE LAW**

Currently, the Act requires that all state and local agencies make their public records available for public inspection during office hours, unless exempted by law. This act further requires that if a state agency withholds any public record, it must demonstrate that 1) the record was exempt from disclosure, or 2) the public interest for nondisclosure outweighed the public interest for disclosure.

Within 10 days after receiving a request for a record, each agency must determine whether the request seeks public records that can be disclosed. In unusual circumstances the 10-day time limit may be extended. The agency then must provide the requester with a written notice, explaining the reasons for the extension and the date on which a determination can be expected to be provided. Upon request of an identifiable record, the agency will make the record available promptly to the requester once the duplicating or statutory fee is paid.

Existing federal law provides the Freedom of Information Act (FOIA). The FOIA requires federal agencies to make public information available upon request, unless specifically exempted by law. The provisions under the FOIA are similar to the Act.

Existing federal and state laws prohibit the disclosure of any taxpayer information, except as specifically authorized by statute. Any FTB employee or member responsible for the unauthorized disclosure of federal or state tax information is subject to criminal prosecution. Improper disclosure of federal tax information is a felony and improper disclosure of state tax information is a misdemeanor.

### **THIS BILL**

Under the Act, this bill would add the requirement that an agency must state the estimated date and time when a public record that can be disclosed will be available.

This bill also would require an agency to do all of the following when a member of the public either makes a request or contacts an agency about making a request for a public record:

1. Identify records and information that may be responsive to the request.
2. Describe where the records are located (e.g., information technology, environment or actual physical location).
3. Assist the requester with reasonable options to obtain records responsive to their inquiry.

### **IMPLEMENTATION CONSIDERATIONS**

The amendments would introduce the term "information" to the Act. It is unclear what "information" the bill requires an agency to identify. Presently, the Act requires the release only of disclosable public records, not "information." To be consistent with the provisions of the Act, the department would interpret "information" to mean a public record. However, it would be preferable if the term is clarified or defined.

## TECHNICAL CONSIDERATIONS

The author may wish to clarify that the bill would apply to requests for public records made on or after January 1, 2002. This will reduce potential confusion regarding requests that have been made before that date and are still being processed.

## **LEGISLATIVE HISTORY**

SB 48 (Sher, 1999/2000) and SB 2027 (Sher, 1999/2000) would have amended the California Public Records Act to require that state agencies justify the withholding of any record by demonstrating in writing that a record is exempt from disclosure or the public interest is served by not making the record public. These bills would have established a procedure to allow any person to appeal to the Attorney General if a state or local agency denies access to a public record or subverts the intent of the bill by actions short of denial of inspection. SB 48 was vetoed by the Governor because of its interaction with another bill he signed and its potentially significant costs. SB 2027 was vetoed because of the "bureaucratic reporting mechanism" the bill was establishing and its potentially significant costs.

AB 2799 (Shelley, Ch. 982, Stats. 2000) required denials of requests for public records to be in writing.

## **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

## **ECONOMIC IMPACT**

This bill would not impact the state's income tax revenue.

## **LEGISLATIVE STAFF CONTACT**

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